

Consent Agenda Item 1.d

September 15-16, 2021 Board Meeting

Case No. 21CW3086 (Water Division 5); Elk Run Ranch Aspen Holdings, LLC and
4303 Snowmass Creek, LLC

Summary of Water Court Application

Application for approval of plan for augmentation and appropriative right of exchange.

Staff Recommendation

Staff recommends that the Board ratify the filing of a Statement of Opposition filed on behalf of the Board in August 2021 to protect CWCB's instream flow water rights.

CWCB Instream Flow Water Rights

The CWCB holds water rights, including the following instream flow water rights in Water Division 5 in the Roaring Fork Watershed, that could be injured by this application:

Case Number	Stream	Upper Terminus	Lower Terminus	CFS Rate (Dates)	Approp. Date
W-2941(1976)	Capitol Creek	outlet Capitol Lake	confl Snowmass Creek	10 (1/1 - 12/31)	01/14/1976
W-2943A (1976)	Snowmass Creek	confl W Snowmass Creek	confl Capitol Creek	12 (4/1 - 10/15) flowrate varies 7-12 (10/16 - 3/31)	01/14/1976
W-2943B (1976)	Snowmass Creek	confl Capitol Creek	confl Roaring Fork River	12 (4/1 - 10/15) 11 (10/16 - 3/31)	1/14/1976
85CW0639	Roaring Fork River	confl Fryingpan River	confl Crystal River	75 (10/1 - 3/31) 145 (4/1 - 9/30)	11/08/1985
85CW0646	Roaring Fork River	confl Maroon Creek	confl Fryingpan River	30 (10/1 - 3/31) 55 (4/1 - 9/30)	11/08/1985
92CW0280*	Snowmass Creek	confl W Snowmass Creek	confl Capitol Creek	3 (4/1 - 10/15)	09/15/1992
92CW0281*	Snowmass Creek	confl Capitol Creek	confl Roaring Fork River	10.5 (4/1 - 10/15)	09/15/1992

* Increased

Potential for Injury

- The proposed plan for augmentation and exchange may not replace depletions in the proper time, place, and amount, which could injure the CWCB's instream flow water rights.
- The proposed flow through water right could injure the CWCB's instream flow water rights because it is fully depletive to the instream flow segments between the point of

diversion and the location where water is returned to the stream and could be depletive to the downstream instream flow water rights.

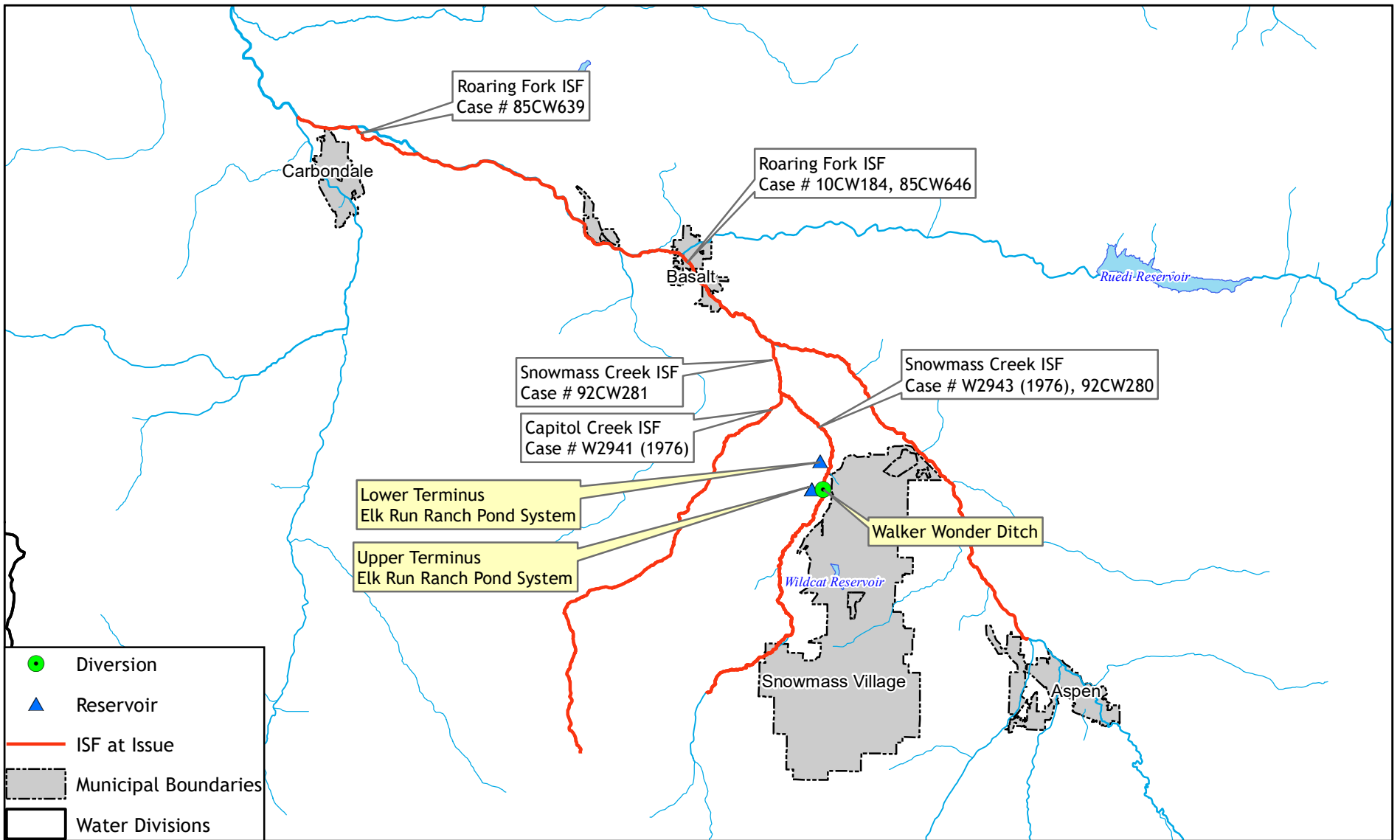
- Applicant's claim for the off-channel "Elk Run Ranch Pond System, including any open channels connecting the ponds" may be in conflict with the ruling in *St. Jude's Co. v. Roaring Fork Club, L.L.C.*, 2015 CO 51, 351 P.3d 442 (Colo. 2015) (holding that diversions for in-ditch aesthetic, recreational, and piscatorial use for the purpose of recreating a natural stream on private land are not diversions for beneficial use under Colorado water law).
- It is unclear if the claimed senior irrigation uses can occur without a change of water rights.
- Terms and conditions should be included in the decree to ensure that the proposed plan for augmentation will not injure the CWCB's instream flow water rights and flows protected under Case No. 10CW184.

Other Objectors

Statements of Opposition were also filed by the City of Aurora; Lazy O Ranch Homeowners Association, Inc.; Quad III Trust Under Agreement Dated June 16, 1997; and, Gary S. Beck.

Attorney Representing CWCB

William D. Davidson, Assistant Attorney General, is assigned to this case and can be contacted at will.davidson@coag.gov, or 720-508-6280.

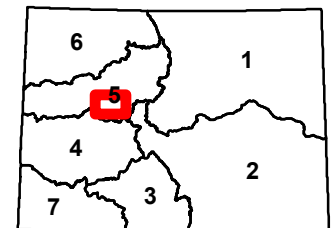


COLORADO
Colorado Water Conservation Board

Department of Natural Resources

September 15-16, 2021 CWCB Board Meeting
 Consent Agenda Item 1.d Statement of Opposition
 Case No. 21CW3086 (Division 5)
 Elk Run Ranch Aspen Holdings, LLC and 4303
 Snowmass Creek, LLC

0 2.5 5 10 Miles



DIVISION 5 WATER COURT-JUNE 2021 RESUME

3. PURSUANT TO C.R.S., §37-92-302, AS AMENDED, YOU ARE NOTIFIED THAT THE FOLLOWING PAGES COMPRISE A RESUME OF THE APPLICATIONS AND AMENDED APPLICATIONS FILED WITH THE WATER CLERK FOR WATER DIVISION 5 DURING THE MONTH OF JUNE 2021. *The water right claimed by this application may affect in priority any water right claimed or heretofore adjudicated within this division and owners of affected rights must appear to object and protest within the time provided by statute or be forever barred.*

2021CW3086 PITKIN COUNTY–SNOWMASS CREEK OR ITS TRIBUTARIES. ELK RUN RANCH ASPEN HOLDINGS, LLC and 4303 SNOWMASS CREEK, LLC, c/o Ramsey L. Kropf, Somach Simmons & Dunn, 2033 11th St., Suite 5, Boulder, CO 80302, (303) 449-2834. APPLICATION FOR APPROVAL OF AUGMENTATION PLAN AND APPROPRIATIVE RIGHT OF EXCHANGE. **First Claim: Approval of Augmentation Plan. A. Structure to be Augmented: Name of Reservoir: Elk Run Ranch Pond System. Decree for Structure: Conditional storage water right pending in Case No. 21CW3085, Division 5 Water Court, filed contemporaneously herewith. Appropriation Date: October 1, 2020. Amount: 9.0 acre-feet, conditional, cumulative for entire Elk Run Ranch Pond System, together with the right to fill and refill in priority or as augmented. Source: Walker Wonder Ditch, tributary to Snowmass Creek, tributary to Roaring Fork River, tributary to Colorado River. The headgate of the Walker Wonder Ditch is located on the West bank of Snowmass Creek whence the Northeast Corner of Section 14, Township 9 South, Range 86 West of the Sixth Principal Meridian bears North 44°49' East a distance of 1630.42 feet. Uses: Fire protection, stock watering, recreation, aesthetic, piscatorial, evaporation, wildlife watering, and use as pumping forebay(s) for direct flow irrigation water rights. Legal Description: One or more off-stream ponds, including open channels and/or pipelines connecting the ponds, located on Applicant's Property. The lower terminus of the pond system is in the SW/4 NE/4 of Section 11, T9S, R86W, 6th P.M., in Pitkin County, Colorado (UTM NAD83 Zone 13 Easting 330957.0; Northing 4350197.0). The upper terminus of the pond system is in the NE/4 NW/4 of Section 14, T9S, R86W, 6th P.M. in Pitkin County, Colorado (UTM NAD83 Zone 13 Easting 330572.0; Northing 4348942.6). The pond system will not intercept groundwater or create delayed evaporative depletions. Applicant will specify the pond locations once the ponds are constructed and the water right is made absolute. The currently planned configuration of the Elk Run Ranch Pond System is shown on Figures 1 and 2 attached to the Application on file with the court. Remarks: Applicant seeks to augment this structure as ultimately adjudicated and decreed in Case No. 21CW3085 (filed contemporaneously herewith) and reserves the right to adjust its claim accordingly without having to amend and re-publish this application. B. Water rights to be used for augmentation: Basalt Water Conservancy District Contract. Applicant currently holds a water supply contract from the BWCD (Contract No. 612) in an amount of 7.8 acre-feet of annual augmentation water releases from the sources described below to augment out-of-priority diversions that Applicant will amend as necessary to account for the uses contemplated in this application. a.) Green Mountain Reservoir. Case Nos. 2782, 5016 and 5017, U.S. Dist. Ct. (Colo.), October 12, 1955. Legal Description: Located approximately 16 miles Southeast of the Town of Kremmling in Summit County, Colorado, and more particularly in all or parts of Sections 11, 12, 13, 14, 15, and 24 of Township 2 South, Range 80 West, and in Sections 17, 18, 19, 20, 21, 28, 29, and 34, Township 2 South, Range 79 West of the 6th P.M. Source: Blue River, tributary to Colorado River. Amount: 154,645 acre-feet. Adjudication date: October 12, 1955. Appropriation Date: August 1, 1935. Uses: in accordance with paragraph 5(a), (b), and (c) of the section entitled "Manner of Operation of Project Facilities and Auxiliary Facilities" in Senate Document 80. District interest: The District holds Contract No. 8-07-60-W0727 with the United States Bureau of Reclamation. This contract entitles the District to delivery of 1000 AF of water annually from the marketable yield of Green Mountain Reservoir, subject to the terms and conditions of the contracts between the District and Bureau of Reclamation. b.) Ruedi Reservoir. Case No. CA 4613, Garfield County District Court. Legal Description: An on-channel reservoir located in Sections 7, 8, 9, 11, and 14 through 18, Township 8 South, Range 84 West of the 6th P.M. The reservoir is located in portions of Eagle and Pitkin counties. Source: Frying Pan River, tributary of Colorado River. Amount: 140,697.3 acre-feet, reduced to 102,369 acre-feet pursuant to order of the Court in Case No. W-789-76. The full amount was made absolute in Case No. 88CW85. Adjudication date: June 20, 1958. Appropriation date: July 29, 1957. Use: Generation of electric energy, domestic, municipal, piscatorial, industrial, and irrigation. Refill: By decree of the Water Court in Case No. 81CW34, Ruedi Reservoir was decreed a refill right in the amount of 101,280 AF, conditional. In Water Court Case No. 95CW95, 44,509 AF of the refill right was made absolute. In Water Court Case 01CW269, an additional 25,257 AF of the refill right was made absolute, for a total of 69,766 AF absolute in the refill right. District interest: The District holds contract numbers 2-07-70-W0546, 009D6C0014, 039F6C0012 and 139D6C0099 with the United States Bureau of Reclamation. These four contracts collectively entitle the District to delivery of 1790 AF of water annually from the regulatory capacity of Ruedi Reservoir, subject to the terms and conditions**

**Attachment
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of the contracts between the District and Bureau of Reclamation. c.) Information from previous decrees for Troy Ditch and Edith Ditch rights:

Structure	Priority	Case No.	Adj. Date	App. Date	Decreed Amount (CFS.)	Use (4)	AMOUNT SOLD, TRANSFERRED OR RESERVED					AMOUNT REMAINING FOR DISTRICT (10)	
							(5)	(6)	(7)	(8)	(9)	CFS	AF
Troy Ditch (1)	370	3082	08/25/1936	05/01/1906	5.10	I	0.000	0.000	0.095	0.064	0.035	4.906	N/A
Troy Ditch 1st Enlg	427	3082	08/25/1936	05/01/1928	10.80	I	0.000	0.000	0.200	0.134	0.073	10.393	N/A
Structure	Priority	Case No.	Adj. Date	App. Date	Decreed Amount (CFS.)	Use (4)	AMOUNT SOLD, TRANSFERRED OR RESERVED					AMOUNT REMAINING FOR DISTRICT (10)	
							(5)	(6)	(7)	(8)	(9)	CFS	AF
Troy Ditch 2nd Enlg	669	4613	06/20/1958	06/01/1942	6.20	I	0.000	0.000	0.115	0.077	0.042	5.966	N/A
Edith Ditch	353	3082	08/25/1936	05/01/1904	2.72	I	0.110	0.1320	0.050	0.000	0.018	2.410	N/A
Edith Ditch 1st Enlg	673	4613	06/20/1958	07/01/1946	3.23	I	0.000	0.000	0.060	0.000	0.022	3.148	N/A
Troy Ditch Water System a.k.a. Lower Headgate	(2)	W-2281			15.50(3)	I, D, M, C, P	0.110	0.1320	0.520	0.275	0.190	14.273	412.89

(1) Originally diverted from Miller Creek. All others originally diverted from Fryingpan River. (2) Alternate point for all priorities of Troy and Edith Ditches. (3) Combined amount limited to 15.5 cfs. and 453 AF of consumptive use, 300 AF of which can be stored. (4) I = Irrigation, D = Domestic, M = Municipal, C = Industrial and P = Piscatorial. (5) Transferred to Edith Ditch Well in Case No. 80CW1 with 1.0 AF. (6) Transferred to three springs on Cap K Ranch in Case No. 82CW189 (1.29 AF assumed to be included). (7) Deeded to George Yates with 15.4 AF in 1983. 0.2 cfs and 10.60 cfs was included in Case No. 82CW357 for Ruedi South Shores plan for augmentation. (8) Deeded to Joan Wheeler in 1987 for diversion at the Troy Ditch 1st and 2nd Enlargement (16.9 AF assumed to be included). (9) Reserved for augmentation of Cap K Ponds with 5.52 AF. Case No. 91CW220. (10) A total of 40.11 AF of the original 453.00 AF has been sold or transferred. In Case No. W-2281, Division 5, the Court decreed that 453 AF of annual consumptive-use credits were available to these ditches, and that 300 AF could be stored in an unnamed reservoir. Applicant owns 412.89 AF of the 453 AF and makes the water rights available to contract allottees for use pursuant to an approved substitute supply plan or decree of Court. This Court changed the use of the 412.89 AF to include augmentation and exchange in Case Nos. 98CW26 and 98CW89 (Consolidated). The Troy and Edith augmentation water can be delivered to the Fryingpan, Roaring Fork or Colorado rivers by bypassing water at the headgate on the Fryingpan River. d.) Information from previous decrees for Robinson Ditch rights:

STRUCTURE	DECREE D AMOUNT/ T/ (CFS)	AMOUNT OWNED BY DISTRICT (CFS)(1)	ADJ. DATE	APP. DATE	PRIORIT Y	CASE NO. (2)
ROBINSON DITCH	5.00	1.21	05/11/188 9	06/15/188 2	38	132
ROBINSON DITCH	2.50	0.60	05/11/188 9	04/15/188 6	140	132
ROBINSON DITCH	2.00	0.48	05/11/188 9	11/15/188 6	167	132
ROBINSON DITCH	10.70	2.59	12/29/190 3	04/25/189 9	212C	1061
ROBINSON DITCH	20.06	4.85	08/25/193 6	04/25/190 0	326	3082

Legal Description: The point of diversion, as decreed, is located on the North bank of the Roaring Fork River one-half mile below the mouth of Sopris Creek in Section 11, Township 8 South, Range 87 West, 6th P.M. Historical Use: Irrigation of approximately 137.2 acres of hay and pasture under District's interest in the Robinson Ditch water rights. In Case No. 93CW319, the Court decreed that 360 AF of annual consumptive-use credits are associated with said irrigation. In that case, the Court also decreed a change of use of District's Robinson Ditch rights to include augmentation. The District makes the credits available to contract allottees for use pursuant to an approved substitute supply plan or decree of Court. The District applies the credits principally to the augmentation of Blue Creek and the Roaring Fork River. Applicant does not intend to change a water right to provide a source for augmentation. C. Statement of Plan for Augmentation. Background: This plan for augmentation will replace out-of-priority diversions made to supply the Pond System. Applicant plans to fill the ponds during the spring when the Pond System is in priority and then rely on its BWCD contract water to replace losses from evaporation and livestock use when Snowmass Creek, the Roaring Fork River below the confluence with Snowmass Creek, or the Colorado River, below the confluence with the Roaring Fork River, are on call. Out-of-priority diversions under this augmentation plan are assumed to be 100% consumptive and will be fully replaced via exchange on a one-to-one basis. Demand: The maximum annual evaporation from open water associated with the 1.94 acres of pond surface area is calculated to be 7.065 AF/year. The total amount of diversions required to offset losses from evaporation and livestock use is calculated to be 7.696 AF/year. The amount of BWCD contract water required to replace Applicant's out-of-priority diversions is calculated to be 4.870 AF/year. These amounts account for transit losses associated with conveying water to the Pond System as well as conveying BWCD water for purposes of replacement and exchange. Water will be conveyed to the Pond System by way of the Walker Wonder Ditch and then, where the Ditch crosses Applicant's property, by means of pump and enclosed pipe. Net evaporation is computed on the basis of 3.64 AF per surface acre annually, or 7.065 AF per year. Monthly distribution and calculation of gross annual water feature evaporation is in accordance with the Office of the State Engineer's Policy 2019-01 and does not take credit for effective precipitation. Call scenarios: Downstream call- Applicant will use its BWCD contract water to augment by exchange any valid administered call with a point of diversion below the confluence of the Roaring Fork and Fryingpan Rivers, including on the Colorado River mainstem. The application contains estimates of the diversion amounts needed to offset losses to the Pond System from evaporation and livestock use, which are assumed to be 100 percent consumptive to the stream. The application also contains estimates of the augmentation releases under the BWCD allotment contract during a critical drought year required to replace the out-of-priority diversion amounts. Local call- In the event of a valid administered local call on Snowmass Creek or the Roaring Fork River between its confluences with the Fryingpan River and Snowmass Creek, Applicant will curtail diversions to the Pond System for all uses described, though will continue use of the ponds as a pumping forebay(s) for in priority direct flow irrigation rights. Pond levels will lower commensurate with evaporation as all such direct-flow diversions will be pumped out of the ponds within 72 hours. **Second Claim: Appropriative Right of Exchange.** The Plan for Augmentation described in the First Claim above will operate by exchange for the Roaring Fork and Colorado River replacement water sources. Figure 3 attached to the Application on file with the court shows the exchange-from and exchange-to locations for each exchange claimed below. A. Name of structure: **Elk Run Ranch Colorado River Exchange.** Downstream terminus: The confluence of the Roaring

Fork River and the Colorado River located in the SE 1/4 of the NW 1/4 of Section 9, Township 6 South, Range 89 West of the 6th P.M., at a point approximately 2,200 feet from the North section line and 2,350 feet from the West section line (Garfield County). Upstream terminus: The location of the Walker Wonder Ditch headgate. Source of substitute supply: BWCD water in the Green Mountain Reservoir. Rate of exchange: up to 2.0 cfs, conditional. Amount of exchange: up to 4.9 acre-feet per year, conditional. Appropriation date: October 1, 2020, with the appropriation initiated by forming the intent to appropriate paired with overt acts, including but not limited to inspection, survey, and design. Remarks: The Elk Run Ranch Colorado River Exchange is part of an integrated water supply plan for Applicant's property, which includes the Elk Run Ranch Pond Systems to be adjudicated through the application filed contemporaneously herewith. B. Name of structure: **Elk Run Ranch Roaring Fork Exchange No. 1**. Downstream terminus: The confluence of the Roaring Fork and Fryingpan Rivers, located in the SW 1/4, SE 1/4, Section 7, Township 8 South, Range 86 West of the 6th P.M., at a point approximately 647 feet from the South section line and 1,475 feet from the East section line (Eagle and Pitkin Counties). Upper terminus: The location of the Walker Wonder Ditch headgate, as described in Paragraph 4.1.4 above. Source of substitute supply: BWCD water in the Ruedi Reservoir and/or BWCD water in the Troy and Edith Ditch. Rate of exchange: up to 2.0 cfs, conditional. Amount of exchange: up to 4.9 acre-feet per year, conditional. Appropriation date: October 1, 2020, with the appropriation initiated by forming the intent to appropriate paired with overt acts, including but not limited to inspection, survey, and design. Remarks: The Elk Run Ranch Roaring Fork Exchange No. 1 is part of an integrated water supply plan for Applicant's property shown on Figures 1 and 2, which includes the Elk Run Ranch Pond Systems to be adjudicated through the application filed contemporaneously herewith. C. Name of structure: **Elk Run Ranch Roaring Fork Exchange No. 2**. Downstream terminus: The point of diversion for the Robinson Ditch on the north bank of the Roaring Fork River one-half mile below the mouth of Sopris Creek in Section 11, Township 8 South, Range 87 West of the 6th P.M. (Eagle County). Upper terminus: The location of the Walker Wonder Ditch headgate. Source of substitute supply: BWCD water in the Robinson Ditch. Rate of exchange: up to 2.0 cfs, conditional. Amount of exchange: up to 4.9 acre-feet per year, conditional. Appropriation date: October 1, 2020, with the appropriation initiated by forming the intent to appropriate paired with overt acts, including but not limited to inspection, survey, and design. Remarks: The Elk Run Ranch Roaring Fork Exchange No. 2 is part of an integrated water supply plan for Applicant's property, which includes the Elk Run Ranch Pond Systems to be adjudicated through the application filed contemporaneously herewith. Names and addresses of landowners: Applicant owns the land upon which the pond system is located and where water will be put to beneficial use.

YOU ARE HEREBY NOTIFIED THAT YOU HAVE until the last day of AUGUST 2021 to file with the Water Clerk a verified Statement of Opposition setting forth facts as to why this application should not be granted or why it should be granted in part or on certain conditions. A copy of such statement of opposition must also be served upon the applicant or the applicant's attorney and an affidavit or certificate of such service shall be filed with the Water Clerk, as prescribed by Rule 5, CRCP. (Filing Fee: \$192.00) KATHY POWERS, Water Clerk, Water Division 5; 109 8th Street, Suite 104 Glenwood Springs, CO 81601.